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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/673,558	12/06/2000	Ronald R. Marquardt	3027 .00014	8576

7590

07/22/2002

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EXAMINER

GRUN, JAMES LESLIE

ART UNIT

PAPER NUMBER

1641

DATE MAILED: 07/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
**09/673,558**

Applicant(s)  
**MARQUARDT et al.**

Examiner  
**James L. Grun, Ph.D.**

Art Unit  
**1641**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 7 May 2002
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Technology Center 1600, Group 1640, Art Unit 1641.

The amendment filed 07 May 2002 is acknowledged and has been entered. Claims 1-21 remain in the case.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-11 are rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Eibl et al (U.S. Pat. No. 4,276,259) for reasons of record.

Claims 12, 14-18, and 20-21 are rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Behnke et al (U.S. Pat. No. 5,573,921) for reasons of record.

Claims 1-21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined teachings of Marquardt et al (WO 97/43438), Eibl et al (U.S. Pat. No. 4,276,259), Fish et al (U.S. Pat. No. 5,126,276), and Köhler (U.S. Pat. No. 4,822,565) for reasons of record.

Applicant's arguments filed 07 May 2002 have been fully considered but they are not deemed to be persuasive. Applicant urges that the prior art references teach additional steps, such as washing steps, in their methods. This is not found persuasive because the instant open claim language does not exclude any additional steps, if indeed the steps performed by the references are additional. In this regard, notwithstanding applicant's implications to the contrary,

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it is noted that coating and washing steps for the probe prior to assay are required by the instant method as well as the prior art methods. Further, applicant provides no specific examples of determining label on the probe, therefore it is unclear that applicant intended probe to be unwashed prior to determination of probe-associated label in the assay. Moreover, it is not clear, if probe-associated label is to be measured, that washing the probe materially changes the method as disclosed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR REPLY TO THIS FINAL ACTION IS SET TO EXPIRE **THREE MONTHS** FROM THE MAILING DATE OF THIS ACTION. IN THE EVENT A FIRST REPLY IS FILED WITHIN **TWO MONTHS** OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE **THREE-MONTH** SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR REPLY EXPIRE LATER THAN **SIX MONTHS** FROM THE MAILING DATE OF THIS FINAL ACTION.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Grun, Ph.D., whose telephone number is (703) 308-3980. The examiner can normally be reached on weekdays from 9 a.m. to 5 p.m.

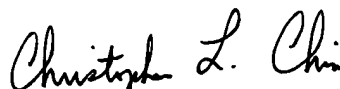
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le, SPE, can be contacted at (703) 305-3399.

The phone numbers for official facsimile transmitted communications to TC 1600, Group 1640, are (703) 872-9306, or (703) 305-3014, or (703) 308-4242. Official After Final communications, only, can be facsimile transmitted to (703) 872-9307.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196. The above inquiries, or requests to supply missing elements from Office communications, can also be directed to the TC 1600 Customer Service Office at phone numbers (703) 308-0197 or (703) 308-0198.



James L. Grun, Ph.D.  
July 15, 2002



CHRISTOPHER L. CHIN  
PRIMARY EXAMINER  
GROUP 1800/641